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OPINION COMMITTEE

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FILE # ML-42292-01  
I.D. # 42292

**REQUEST FOR  
ATTORNEY'S GENERAL'S OPINION**

*RQ-0467-JC*

**ISSUE:**

**Whether Senate Bill 1074, as passed by the seventy seventh Texas Legislature, is unconstitutional for failure to meet the title or caption requirements for an act as set forth by article 3, paragraph 35 of the Texas Constitution?**

**ARGUMENT AND AUTHORITIES**

Article 3, § 35, Texas Constitution  
**Subjects and titles of bills**

Sec. 35. (a) No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

(b) The rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. The legislature is solely responsible for determining compliance with the rule.

(c) A law, including a law enacted before the effective date of this subsection, may not be held void on the basis of an insufficient title.

Amended Nov. 4, 1986.

The title or caption of S.B. 1074 reads "**AN ACT RELATING TO THE PREVENTION OF RACIAL PROFILING BY CERTAIN PEACE OFFICERS**"

**This entire act is in violation of article 3, paragraph 35 of the Texas Constitution for the following reasons.**

**First, there is no notice in the title that four separate codes bearing no relation to each other in topic matter or to racial profiling are to be amended by adding substantive matter not germane to the provision amended.**

*When title of an original act embraces matters covered by amendment, the title or caption of the amendment need not state the subject of the law amended or specify the nature of the proposed amendment, but new substantive matter in the amendment, not germane to the provision amended, is invalid as legislation on matters not expressed in title of amendatory act. Vernon's Ann.St.Const. art. 3, § 35. White v. State 440 S.W.2d 660.*

*Caption to bill which created new offense of aggravated possession of marihuana did not fulfill state constitutional requirement that caption give readers fair notice of subject matter contained within bill where caption "referred" to one act and had effect of modifying at least two other separate statutes not mentioned in caption. Ex parte Crisp 661 S.W.2d 944*

*Necessity of following requirement of this section [Texas Const. Art. 3, § 35.] that all subjects of legislative bill shall be included in caption of said bill is especially true when bill involved amends existing statute. Stein v. State (Cr.App. 1974) 515 S.W.2d*

*Title of amendatory act must conform to subject matter in amendment. Turnipseed v.State (Cr.App.1980) 609 S.W.2d 798.*

**Second, the title specifies that it applies only to "certain peace officers," a very restrictive term. No description, definition, listing or any other vehicle is provided in the body of this act to determine who the "certain peace officers" are. The term is never used again. Therefore, it is impossible to determine who is to be prevented from racial profiling.**

*A title may be so general or so specific in some limited matters or inaccurate as to throw one off guard, mislead or serve as a cover for secret legislation thereby violating this section [Texas Const. Art. 3, § 35.]. Atwood v. Willacy County Nav. Dist. (Civ.App.1956) 284 S.W.2d 275, ref. n.r.e.*

**Third, the title specifies "certain peace officers"(whoever they may be) when in fact the body of the act concerns all peace officers, all agencies that employ peace officers and all magistrates and judges that handle traffic cases.**

*This section [Texas Const. Art. 3, § 35.] Maybe violated by title which by mentioning one thing, impliedly excludes another though both are included within the body of the act. If a statute by its title appears to affect only the residents of particularly designated localities, while the provisions in its body affect other localities or territory, then the title is misleading and unconstitutional in so far as it affects the unnamed places. Sutherland v. Board of Trustees of Bishop Independent School Dist. (Civ.App.1924) 261 S.W. 489.*

*Test of sufficiency of a legislative title is whether it gives reasonable notice of contents of bill to an average legislator or interested citizen; if person interested in legislation on a particular subject would be likely to get impression from title that further reading is unnecessary because bill does not relate to a subject, bill, if enacted, is unconstitutional to the extent that it deals with that subject. Vernon's Ann.St.Const. art. 3, § 35. C. Hayman v. American Indemnity 473 S.W.2d 62.*

*Because all statutes relate to one another as legislative enactments of social policy, and, because all statutes pertaining to criminal matters relate to one another, term "relating to" in caption of bill did not save bill from fate of unconstitutionality, where caption of bill stated that bill related to offenses and criminal penalties under Controlled Substances Act, but bill amended Controlled Substances Act, Code of Criminal Procedure, and Penal Code. Ex parte Crisp 661 S.W.2d 944*

**The title of this act automatically makes it racially sensitive “demanding political correctiveness” regardless of how defective it is. Therefore, since parts of an act may be ruled unconstitutional with the rest being found valid, each section will be analyzed to determine how “liberal” the title of S.B. 1074 would have to be construed for that particular section to be valid legislation.**

*When validity of legislation is challenged under provision of this section that no bill shall contain more than one subject expressed in its title and that act is void as to any subject embraced in act not expressed in title, courts give liberal construction to title of act and attempt to uphold its validity to avoid serious embarrassment of legislation; however the rule of liberal construction will not be followed to the extent that it will relieve legislature of necessity of disclosing real subject of act in the title or allow acts with deceptive titles to be held valid. Whaley v. State (Cr.App.1973) 496 S.W.2d 109. [This act needs an extremely liberal construction if any of it is to fly, the legislature should be embarrassed for passing it and the Governor for signing it.]*

*If a law is passed, and one subject thereof is not included in the caption, this does not make the whole law void because unconstitutional, but only that part of the subject which is not included in the caption. McLaurry v. Watelsky (1905) 39 Civ.App. 394, 87 S.W. 1049.*

*Under the express provision of this section an act containing matters not included within the caption is void only as to the extraneous provisions provided they are separable from the others. Davis v. State (1921) 88 Cr.R. 183, 225 S.W. 532.*

**Senate bill 1074 consists of twelve sections.**

**Section 1** amends chapter 2 of the Code of Criminal Procedure, **Duties and Powers** (of peace officers), by adding **six** sub-articles.

*A stricter rule of conformity of title to subject matter legislated on in the body of an act is applied to amendments than to titles of original acts. White v. State 440 S.W.2d 660*

The **first** of these, prohibits **racial profiling** by any peace officer.

The **second** requires an agency to prepare a detailed **policy on racial profiling**. Both of these definitely relate to **prevention of racial profiling**. But, both of these have serious problems. The title specifies “**certain**” peace officers, a restrictive term, where the articles specifies “**all**” peace officers, a non restrictive term. The second article, establishing a policy, concerns **all agencies** that employ peace officers, no agency is mentioned in the title. It is also ambiguous in its definition of which agencies it applies to. How many traffic stops per year per officer are necessary to make this activity a routine function of the agency?

The **third** would require **all** peace officers to acquire an excessive amount of information during all stops, automobile or pedestrian, about everyone detained for a suspected violation of law. This required information has little or nothing to do with racial profiling. That is unless you might think that a peace officer would actually stop a minority only because of their race and make a record of doing so.

The **fourth** requires agencies to compile and analyze the information collected above and submit it as a report to the governing body of each county or city served by the agency. This analyzing of data might be useful in determining if racial profiling is being practiced by some

individual officer but has little to do with prevention of same.

The **Fifth** provides an exemption from some of the above requirements for agencies that are lucky enough to have video equipment in all of their vehicles.

The **sixth** appears to limit liability but is hollow, deceptive and does little.

Section 1 includes in some manner **each and every agency** that employs peace officers and their **officers**. These people not only have no warning from the act's title that they are affected but could and probably would think they are not because of the use of the term "**certain peace officers**." This term is not only lacking in description but as used is **deceptive and fraudulent**. This section also amends a chapter of the Code of Criminal Procedure by extensively adding to same in a manner inconsistent in subject and style to the existing composition without the mention of so doing in its title.

**Section 2** amends chapter 3 of the Code of Criminal Procedure, a chapter devoted entirely to definitions, by adding a definition of racial profiling. This section along with the prohibiting of racial profiling in section 1 are about the only parts that actually address the spirit of the title of S.B.1074. If the title did not restrict the act to "certain peace officers," these would be valid legislation.

**Section 3** adds to the Education Code, requirements of additional education for all police chiefs concerning the prevention of racial profiling. **Again, this involves people that not only have no warning from the title of S.B. 1074 that they are included but would have reason to believe they were not included because of the term "certain peace officers."**

**Sections 4 and 5** adds education requirements to the Occupations Code for all peace officers. **Not valid for the same reason as section 3 above.**

**Section 6** amends Section 543.202 of the Transportation Code which concerns the form of record that each and every magistrate is to keep for each case in which a person is charged with a violation of traffic laws. This report is for use by The Department of Public Safety. Section 6 adds the question of whether a search of the vehicle occurred and if permission was given if it was searched. The way this is added is strange. The section contains requests for eight items of information such as registration number of the vehicle involved, amount of fine and date of conviction. Instead of being placed at the end of the section as number nine, it is inserted as number six with the existing numbers six, seven and eight becoming seven, eight and nine. This section concerns magistrates who do not qualify as "certain peace officers" and therefore not named in the title. These magistrates have no **personal** knowledge of whether the vehicle is searched or not. If the peace officer filing the case says no search took place when it did then how is the magistrate to know.

**Sections 7 through 12** concern beginning dates for the previous mentioned reports.

**SUMMARY**

**Senate Bill 1074 as passed by the 77th Texas Legislature should be declared unconstitutional because it's caption does not meet constitutional requirements for same.**

Very truly yours,

A handwritten signature in black ink, appearing to read "Phil Garrett", with a stylized flourish at the end.

**Phil Garrett**